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OCA 89-1794
1 June 1989

MEMORANDUM FOR THE RECORD

Subject: Senator Cohen's Proposed Amendment to the
Intelligence Authorization Bill on Providing
Reasons for Denial of Security Access

STAT 1. Chris Straub, Designee of Senator Hollings (D-SC) on
the Staff of the Senate Select Committee on Intelligence,
contacted [] Deputy Director, Senate Affairs,
Office of Congressional Affairs, seeking the Agency's views
regarding a proposed amendment by Senator Cohen to the
Intelligence Authorization Bill. Senator Cohen had sent a
letter to each Member of the SSCI asking for their thoughts
on the amendment, which would require the Agency to provide
individuals with the reasons for the denial of security
access. Mr. Straub planned to meet with Senator Hollings
the next morning (1 June 89) to discuss the issue and wanted
STAT to pass along our informal comments on the proposal. Mr.
[] asked me to follow up with Mr. Straub and in a
subsequent conversation with Mr. Straub, he provided me with
the text of the proposed amendment. (See Attachment A)
Mr. Straub raised some reasons for opposing the change (the
possible compromise of sources and methods and the
additional administrative burden that would generate in FOIA
requests). He also suggested that he might also use
STAT information as provided in a letter discussing the []
STAT case that laid out the Agency's rationale for not
providing the reasons for denial. (See Attachment B)
I agreed that the letter articulated the Agency's position
well, but indicated that it would be worthwhile to see if
interested parties had anything to add, subtract, or change.

STAT 2. I subsequently notified [] OCA who
called the Office of General Counsel for their input on this
STAT question. I contacted the Office of Security, []
Office of the DCI, the Office of the Comptroller, the
Special Assistant to the DDA, and Director of OCA.
STAT [] OGC, []
STAT [] OCA, and [] Deputy Director of
Security for Personal Security, provided their thoughts on
what should be told to Senator Hollings. Based on their
input, I provided Mr. Straub with the following
information:

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--Due process concerns are not an issue with applicants for employment because no entitlement rights were at stake. Individuals are not entitled to access to classified information as a matter of right, so there is no reason to provide them with the reason for a denial of access.

--Agency employees whose clearances are revoked are routinely told the reason for this action, so this is not a problem.

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--Contractor personnel whose clearances are revoked are given the opportunity to learn the reasons for the denial.

--Some contractor personnel are provided the reason for denial of access as outlined in the provisions of DCID 1/14.

--Disclosing the reasons for denial of security access could compromise some sources of information who had requested confidentiality. If the Agency routinely provided the reasons, it could result in sources being identified, and people would be less inclined to give us derogatory information in future background investigations.

--We might also compromise sources and sensitive methods used in background investigations if we informed individuals of specific reasons.

--Many safeguards are built into our system to ensure that principles of fairness were balanced with the need to protect national security matters. When there was a need, then the reasons for security denial were sometimes provided to an individual.

--Additional impact on the Agency would be that there was likely to be a sharp increase in the number of individuals appealing our security determinations (this would require an increase in staffing in this area);

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FOIA requests probably would also increase; security cases would be difficult to close because of the greater number of cases likely to be appealed; additional litigation against the Agency was likely to result; and the Agency might face greater difficulty in recruiting personnel because of the adverse publicity that could result from litigation.

--Because the proposed amendment would impact on a DCI authority, I indicated that it probably would be useful to have a fuller discussion of this issue rather than just making a change to an authorization bill.

3. This conversation was compressed into just a few minutes because Mr. Straub was about to see Senator Hollings on the proposal. He thanked me for my assistance and I offered to provide any additional help that might be useful on this matter. He made no comments on the merits of any of the arguments I presented, simply taking notes to pass along to the Senator. I thanked him for the opportunity to comment on the amendment in advance and commented that Senator Hollings could be of assistance to us on this matter. He gave no indication as to how and when the proposed amendment would be officially surfaced to the Agency. (In coordination with appropriate offices, I will prepare some talking points for possible use by the DDCI at the markup session on 15 June 1989.)

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Office of Congressional Affairs ✓

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31 May 1989
OCA 1789-89

SENATOR COHEN'S PROPOSED AMENDMENT
TO THE INTELLIGENCE AUTHORIZATION BILL FY 90-91

A. During fiscal years 1990 and 1991, no person who is an applicant for employment with or an employee or contractor employee of Central Intelligence Agency shall be denied a security clearance, or have such clearance terminated, without, at a minimum, being advised in writing of the reasons for the proposed action and given an opportunity to respond; unless the Director of Central Intelligence Agency, or his single designee, determined that such reason or reasons cannot be provided without endangering national security.

B. The Director of Central Intelligence Agency shall submit reports to the Select Committee on Intelligence of the Senate and to the Permanent Select Committee on Intelligence of the House of Representatives at the end of fiscal years 1990 and 1991, concerning the number of cases in which notice was not provided pursuant to subsection (a) of this section, and the reasons upon which such decisions were based.

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OCA/LEG, [REDACTED] (31 May 89)

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